

ORDINANCE NO.: 2021-07 (Amended May 11, 2021)
SPONSOR: MAYOR NEUGEBAUER
PRESENTED BY: LAW DIRECTOR DEAN
INTRODUCED: MARCH 23, 2021 **ASSIGNED TO:** _____

AN ORDINANCE TO AMEND SECTION 648.13, ADDITIONAL NOISE DISTURBANCES, OF CHAPTER 643, PEACE DISTURBANCE, OF THE CODIFIED ORDINANCES OF THE CITY OF GREEN, AND DECLARING AN EMERGENCY.

~~WHEREAS, the City of Green desires to amend its Codified Ordinance Chapter 648 Peace Disturbance, Section 648.13 Additional Noise Disturbance; and~~

WHEREAS, the City of Green desires to amend **its Codified Ordinance** Chapter 648 Peace Disturbance, Section 648.13 Additional Noise Disturbance, which **presently** reads as follows:

648.13 ADDITIONAL NOISE DISTURBANCES.

(a) Noisy Advertising. No person shall, by ringing a bell or gong, or by using a phonograph or other instrument for producing or reproducing sounds, or by using loud or boisterous language, or by any unusual or unreasonable noise, advertise goods, wares or other merchandise for sale, either at auction or in any other manner, or by any such means advertise any show, theater, exhibition or entertainment to the annoyance and discomfort of persons of ordinary sensibilities.

(b) Noisy Machinery. No person shall maintain, run, or operate any steam, gas, gasoline, or other engine, boiler, press, machine, or other apparatus so constructed or operated as to make excessive noise, to the annoyance and discomfort of persons of ordinary sensibilities.

(c) Noise-producing Instruments. The use of any device, apparatus, radio, ticker or other noisemaking and noise-emitting device for general advertising purposes, or for the purpose of soliciting trade or attracting attention to any wares, goods, merchandise, instrument or device offered for sale is prohibited.

(d) Noise-producing Vehicles. No person shall operate on private property or permit to be operated on private property a snowmobile, all-purpose vehicle, off-highway motorcycle or other similar vehicle which creates such noise, smoke, or dust, as to cause inconvenience, annoyance or discomfort to any person of ordinary sensibilities.

(e) Sound-Amplifying Devices. No person shall generate or permit to be generated an unreasonable noise or sound which is likely to cause inconvenience or annoyance to a person of ordinary sensibilities by means of a radio, phonograph, television, tape player, loud speaker or any other sound amplifying device, or by any horn, drum, piano or any other musical or percussion instrument.

(f) It is prima facie unlawful for a person to generate or permit to be generated sound in violation of divisions (a) through (e) of this section, between the hours of 10:00 p.m. and 6:00 a.m. the following day in a predominantly residential area where the sound is audible ten feet from the property line of the property on which the source of the sound is

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located. The City shall be exempt from the provisions of divisions (a) through (e) of this section.

(g) No person, being the owner or person in possession of a premises, or being the person in control of the premises by reason of employment, agency, or otherwise, whether such ownership, possession, or control is exclusive or joint, shall permit a violation of this section.

(h) Penalty. Whoever violates any of the provisions of this section is guilty of a misdemeanor of the fourth degree.

(Ord. 04-20. Passed 10-26-04.)

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GREEN, COUNTY OF SUMMIT AND STATE OF OHIO, THAT:

SECTION ONE:

Section 648.13 of Chapter 648 of the Codified Ordinances is amended to read as follows:

648.13 NOISE NUISANCE.

(a) **Definitions. As used in these Codified Ordinances:**

(1) **Ambient noise level** - means the sound pressure level of the all-encompassing noise associated with a given environment, being a composite of many sounds. For the purpose of this Chapter, it is the sound pressure level exceeding ninety percent (90%) of the time, based upon a measurement period of not less than ten minutes and excluding the alleged offensive noise.

(2) **Animal** - includes dogs, cats, cattle, sheep, horses, geese, ducks, turkeys, chickens, or other fowl or any other animal, domestic or wild, maintained or kept as a pet, for work or for a product.

(3) **Decibel** - means a unit for measuring the intensity of sound; used with a sound level meter; also known as dBA relating to sound perceptible to the human ear when using an A weighting measure (Experts agree 85 dBA will harm hearing over time).

(4) **Emergency** - when an authorized vehicle responds to a situation requiring immediate police, fire or medical attention.

(5) **Night time** means the hours from 9:00 p.m. to 9:00 a.m. on weekdays, weekends and holidays.

(6) **Nuisance** - means that which annoys or offends another or others, obstructs the use of property, endangers the comfort or safety of others, essentially interferes with the comfortable enjoyment of life and property and interferes with the ambient sound level of a given property, or tends to depreciate the value of the property of others, and/or violates the laws of decency.

(7) **Residential property** - includes single-family, duplex or multifamily dwellings, nursing homes and similar facilities.

(8) **Sound Level Meter** - means an instrument used for the measurement of sound and noise levels in a specified manner and conforming to the American National Standard Institute's Specifications for Sound Level Meters.

(9) **Sound Pressure Level (SPL)** - means the physical intensity of sound or acoustic power that is measured by a sound level meter. SPL is influenced by numerous noise descriptor. Some of those descriptors utilized by a sound level meter are frequency range, pitch, flat or un-weighted measures, A-weighting measures, C-weighting filters, etc. A-weighting measures emphasize the middle frequency components similar to the response of the human ear.

(b) **Nuisance Conditions Prohibited.**

(1) No person shall cause, produce or create within the City any loud unreasonable sounds, so as to create offensive sounds or conditions which are a nuisance or a menace to the health, comfort, and safety of the public, which includes, but are not limited to, the following:

A. Frequent and habitual use of a radio, stereo, television, tape or CD player, *or other such device for playing music*, musical instrument, phonograph, loud speaker system, or other machine or device for the production or reproduction of sound, or any other audible nuisance, which creates unreasonably loud and disturbing noises of such a character, intensity, and duration so as to disturb the peace, quiet, and comfort of any reasonable person of normal sensitivity residing in the City;

B. Any loud, unnecessary or unusual noise or noises by yelling, singing, whistling, shouting, or otherwise, which annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of any reasonable person of normal sensitivity residing within the ~~County~~ City.

C. Frequent and habitual use of sporting equipment, including but not limited to motorcycles, dirt bikes, quad runners, snowmobiles, three/four wheelers, dune buggies, all-terrain vehicles (ATVs) and firearms, which creates unreasonably loud and disturbing noises of such a character, intensity and duration so as to disturb the peace, quiet and comfort of any reasonable person of normal sensitivity residing in the City.

(2) No person shall keep or harbor within the City any animal which, by frequent and habitual barking, howling, yelping or any other audible nuisance, creates unreasonably loud and disturbing noises of such a character, intensity and duration as to disturb the peace, quiet, and good order of the City.

(3) No person shall operate or maintain any vehicular radio, stereo, CD player, *other device for playing music*, or any noise-making device or noise-amplifying or noise-producing instrument or device in any public or private place, by which the peace and good order of the neighborhood is disturbed, or by which persons owning or occupying property in the neighborhood are subject to a noise nuisance.

(4) No person shall operate or maintain a home, *or auto*, or business burglar alarm which upon activation shall continue to sound after a law enforcement officer has made reasonable and diligent attempt to reach the owner or responsible person

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to reset the alarm. A *home, auto, or burglar alarm* operating and producing sound level conditions which are deemed to be a nuisance, by which the peace and good order of the neighborhood is disturbed, is a violation of this code.

(c) **Maximum Noise Level Recommendations.**

	Daytime	Nighttime
Residential Area	65 dBA	55dBA
Non-residential Area	67 dBA	62 dBA

It is *prima facie* unlawful for a person to generate or permit to be generated sound in violation of divisions (1) through (4) of this section, between the hours of 9:00 p.m. and 9:00 a.m. the following day in a predominantly residential area where the sound ~~is audible ten feet~~ *exceeds the decibel level as measured ten feet* from the property line of the property on which the source of the sound is located.

The City shall be exempt from the provisions of divisions (1) through (4) of this section.

(d) **Enforcement.**

(1) **Complaints of noise nuisance shall be investigated by the ~~division of police~~ law enforcement with jurisdiction at the source of the complaint.**

Factors to be considered in determining whether a violation has occurred shall include, but not be limited to the following:

- The volume of the noise;
- The intensity of the noise;
- Whether the nature of the noise is usual or unusual;
- Whether the origin of the noise is natural or unnatural;
- The volume and intensity of the background noise, if any;
- The proximity of the noise to residential sleeping facilities;
- The nature and zoning of the area within which the noise emanates;
- The density of the inhabitation of the area within which the noise emanates;
 - The time of day or night the noise occurs;
 - The duration of the noise;
- Whether the noise is recurrent, intermittent or constant;
- Whether the noise is produced by a commercial or noncommercial activity;
- Whether a sound from a property is audible more than eighty (80) feet from the property line of the property;
- Whether a sound from a vehicle on a street, highway or in the public right-of-way is audible more than one hundred (100) feet from the vehicle.

(2) **Upon the investigation of a noise nuisance complaint, the law enforcement officer shall determine whether a citation is necessary.**

(3) **The law enforcement officer may use a sound level meter for that determination. A sound level meter is not required for a citation under this code.**

(e) Exemptions. Exempted from these nuisance noise regulations:

- (1) Noise of safety signals and warning devices.**
- (2) Noises resulting from any authorized emergency vehicle when responding to an emergency call or acting in time of emergency.**
- (3) Noises resulting from emergency work or noise levels for which a special permit or permits have been granted, including but not limited to construction permits.**
- (4) Noises from lawfully scheduled sporting events, parades, fireworks, festivals and concerts.**
- (5) Noises resulting from school bells and playground activity.**
- (6) Construction sounds occurring between 7:00 a.m. and 9:00 p.m.**
- (7) Refuse collection occurring between 6:00 a.m. and 9:00 p.m.**
- (8) *The City shall be exempt from these nuisance noise regulations.***

(f) Penalties.

(1) Any person who is found to be in violation of this Noise Nuisance Code shall be issued a warning and a request to desist from a law enforcement officer. If the offender persists in creating a noise nuisance after reasonable warning or request to desist from a law enforcement officer, creating a noise nuisance is a minor misdemeanor.

(2) Any subsequent violation of this Noise Nuisance Code shall be creating a noise nuisance, a misdemeanor of the fourth degree and may result in fines up to \$250.00.

(3) Each day such violation is committed or permitted to continue shall constitute a separate offense.

(4) In any violation of this Noise Nuisance Code involving sound equipment, the sound equipment may be subject to seizure and forfeiture. Disposition of the property subject to seizure and forfeiture under this Noise Nuisance Code shall be pursuant to Ohio- Revised Code Section 2933.41 through 2933.43.

(g) Severability. If any part of this section shall be found to be invalid or unconstitutional by any court of competent jurisdiction, such findings shall not affect the remaining portions hereof and shall remain in full force and effect.

SECTION TWO:

Any other Ordinance or parts thereof in conflict herewith be, and the same hereby are, repealed to the extent of the conflict and all Ordinances not amended by this Ordinance shall remain in full force and effect.

SECTION THREE:

This Ordinance shall take effect and be in force from and after January 1, 2021.

SECTION FOUR:

The City of Green finds and determines that all formal actions of this Council concerning and relating to the adoption of this Ordinance were taken in open meetings of this Council

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and any deliberations of this Council and any of its committees that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements.

SECTION FIVE:

Green City Council declares this to be an emergency immediately necessary for the preservation of the public peace, health, safety and welfare of the citizens of Green. It is necessary for City Council to enact this Ordinance to ensure that the provisions of it are effective January 1, 2021. Provided that this legislation receives the affirmative vote of three-fourths (¾ths) of the members elected or appointed to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, it shall take effect and be in force at the earliest time allowed by law.

ADOPTED: _____

Nichole ~~Baldinger~~ Messner, Clerk of Council

Rocco Yeargin, Council President.

APPROVED: _____, 2021

Gerard M. Neugebauer, Mayor

ENACTED EFFECTIVE: _____, 2021

ON ROLL CALL: Babbitt Brandenburg DeVitis France
 Meager Shaughnessy Yeargin

Suburbanite publication on _____ and _____

Nichole ~~Baldinger~~ Messner, Clerk of Council